

E-filed 9/22/06

1 ROBERT DAVID BAKER, INC.
2 Robert David Baker, Esq. (87314)
3 1611 The Alameda
4 San Jose, CA 95126
5 Facsimile: (408) 292-0703
6 (408) 292-8555

7 Attorney for Plaintiff
8 TAMARA ZELTSER

9
10 IN THE UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13
14 TAMARA ZELTSER,

Case No. 06-00146-JF

15 Plaintiff,

EX PARTE MOTION AND STIPULATION
FOR EXTENSION OF TIME TO MEDIATE
CASE

16 vs.

17 SELECT COMFORT RETAIL
18 CORPORATION,

CASE MANAGEMENT CONFERENCE

19 Defendants,

[DATE: SEPTEMBER 22, 2006]

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22 TO: HONORABLE JEREMY FOGEL AND COUNSEL FOR DEFENDANTS SELECT
23 COMFORT RETAIL CORPORATION:

24 Tamara Zeltser, Plaintiff, through her attorney of record hereby moves this court for an
ex parte order allowing an extension of time to mediate this matter.

25 Good cause for this ex parte motion exists based upon the following declaration of Robert
David Baker.

This application is based upon this application, the attached points and authorities, the
attached declaration of Robert David Baker, and on all documents and records on file in the
above-entitled matter.

1 This is the second application of time for an extension to conduct the mediation in this
2 matter, however, this application does not change the date for the Case Management Conference.

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4 Respectfully submitted,

Dated: September 15, 2006

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7 
Robert David Baker, Esq.
8 Attorney for Plaintiff

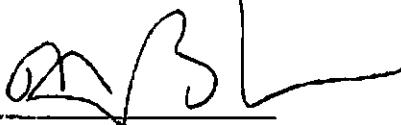
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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Local Rule 7-11 provides that a party may submit an ex parte application for immediate
12 determination by the assigned Judge.

13 All counsel and the mediator have agreed to extend the time to mediate the above-entitled
14 matter, so that the mediation may be held on September 19, 2006, beginning at 1:30 p.m.

15 Respectfully submitted,

Dated: September 15, 2006

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Robert David Baker, Esq.
18 Attorney for Plaintiff

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20 **DECLARATION OF ROBERT DAVID BAKER**
21 **IN SUPPORT OF EX PARTE MOTION**

22 I, Robert David Baker, declare:

23 1. I am an attorney duly licensed to practice in the Courts of the State of California and
24 the United States District Court for the Northern District of California;

25 2. My address is 1611 The Alameda, San Jose, California;

3. I am the attorney for Plaintiff in the above entitled matter;

1 4. The complaint in this matter alleges overtime and other violations under the FLSA
2 and California State Labor Law;

3 5. The Complaint in this matter was filed on January 10, 2006;

4 6. The parties have stipulated to mediation of this matter. John E. F. DiNapoli has been
5 assigned as mediator. A mediation date was set for August 9, 2006;

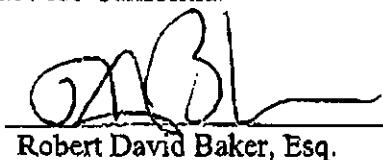
6 7. The mediation in this matter is currently scheduled for September 19, 2006. The
7 Case Management Conference is scheduled for September 22, 2006;

8 8. The time to mediate this matter was previously extended by the court to September
9 13, 2006;

10 9. As a result of a schedule conflict, I was not able to mediate this matter on September
11 13, 2006. Therefore, the parties and the mediator agreed to a further mediation date of
12 September 19, 2006. This extension will not affect the date of the Case Management
13 Conference;

14 10. Therefore, request is made of this court to extend the time to mediate this matter to
15 September 19, 2006.

16 I declare under penalty of perjury the foregoing is true and correct and that this
17 declaration is executed on September 7, 2006, at San Jose California.



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Robert David Baker, Esq.

STIPULATION

21 It is so stipulated.

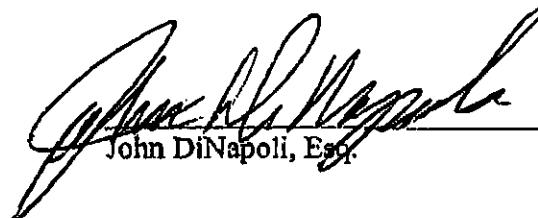
22 Dated: September 7, 2006



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Brian T. McMillan, Esq.

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Dated: September 7, 2006



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John DiNapoli, Esq.

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27 John DiNapoli, Esq.

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ORDER

2 Based upon the Ex Parte Application of Plaintiff Tamara Zeltser, through her attorney of
3 record Robert David Baker,

4 AND FOR GOOD CAUSE APPEARING, IT IS SO ORDERED that the time to mediate
5 the above-entitled matter shall be extended to September 19, 2006.

6 Dated: September 21 2006
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10 Honorable Jeremy Fogel
11 Judge, United States District Court

1 **CASE NAME:** *Zeltser v. Select Comfort*
2 **CASE NUMBER:** *C06-00146 JF*

3 **PROOF OF SERVICE**

4 I, the undersigned declare:

5 I am employed in the county of Santa Clara. I am over the age of eighteen (18) and not a
6 party to the within matter. My employer and business address is Robert David Baker, Inc., 1611
7 The Alameda, San Jose, California 95126.

8 On September 15, 2006, following ordinary business practices, I served the following
9 document(s):

10 *ExParte Motion for Extension of Time to Mediate; Memorandum of Points and Authorities;
11 Declaration of Robert David Baker, Esq.*

12 On the parties involved addressed as follows:

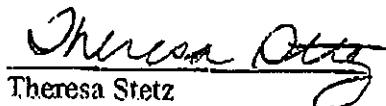
13 Todd K. Boyer, Esq.
14 Littler Mendelson
15 50 W. San Fernando Street, 14th Floor
16 San Jose, CA 95113-2303

17 **BY FACSIMILE:** By use of a facsimile machine telephone number (408) 292-0703, I
18 served a copy of the within document (s) on the above interested parties at the facsimile
19 numbers listed above. The transmission was reported as completed and without error.

20 **BY MAIL:** I am readily familiar with my employer's practice for collection and
21 processing of documents for mailing with the United States Postal Services and that
22 practice is that the documents are deposited with the United States Postal Service with
23 postage fully prepaid the same day as the collection in the ordinary course of business.
24 On this date I served the above interested parties following my employer's ordinary
25 business practices.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Executed on September 15, 2006 at San Jose, California.

29 
30 Theresa Stetz